

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GENERAL METALS OF TACOMA, INC., a
Washington Corporation, and ARKEMA,
INC., a Pennsylvania Corporation,

Plaintiffs,

v.

BEAN ENVIRONMENTAL LLC, a
Delaware Limited Liability Company; and
BEAN DREDGING LLC, a Louisiana
Limited Liability Company,

Defendants.

Case No. C05-5306 RBL

ORDER

THIS MATTER comes on before the above-entitled Court upon Plaintiffs' Motion to Compel Production of Documents [Dkt. #85].

Having considered the entirety of the records and file herein, the Court rules as follows:

Plaintiffs General Metals of Tacoma, Inc. and Arkema, Inc. (the Head of the Hylebos Cleanup Group, hereinafter "HHCG") seek to compel the production from defendants Bean Environmental LLC and Bean Dredging LLC (hereinafter "Bean") of "all documents, memoranda, and communications that refer or relate to the Project, including but not limited to the work performed by, or advice sought by you on the Project, and/or equipment and/or technology used by you on the Project" from Bean Stuyvesant LLC, Stuyvesant Dredging Company, and Royal Boskalis Westminster ("Bokalis"). Decl. of Marisa Bavand ("Bavand Decl."), para. 7, Exh. F, HHCG's Second Set of Requests for Production and Responses and Objections Thereto.

1 Request for Production No. 2, Dkt. #88. Bean responded that they would provide, to the extent not already
 2 provided, “additional responsive, non-privileged documents, if any, in its possession, custody or control located
 3 after reasonable inquiry.” Id. Bean argues in opposition to the motion that they have provided plaintiffs all
 4 the documents that Bokalis or Stuyvesant Dredging Company provided Bean during the course of the Project.
 5 Decl. of Kevin J. Craig (“Craig Decl.”), para 3., Dkt. #99. Bean further argues that Bokalis is not a party to
 6 this action, that Bean has no control over Bokalis, and, as such, cannot be compelled to produce documents
 7 in Bokalis’ possession. Bean’s Opposition to HHCG’s Motion to Compel, Dkt. #97; Craig Decl. paras. 6-7.

8 In general, the documents HHCG seeks from Bokalis include design related documents, invoices from
 9 Bokalis to Bean, production estimates, schedule analysis, sediment data analysis, and equipment selection
 10 analysis, together with reports sent from Bean to Bokalis. Evidently, Bokalis maintains a database including
 11 these documents in its offices in the Netherlands. Motion to Compel, pp. 6-7; Bavand Decl., para. 9, Exh. G,
 12 (letter dated August 22, 2006 from Marisa Bavand to William F. Cronin).

13 LEGAL STANDARDS

14 Rule 34 governs requests for production of documents. The rule provides that a “party may serve on
 15 any other party a request . . . to produce . . . any designated documents . . . which constitute or contain matters
 16 within the scope of Rule 26(b) and which are in the possession, custody, or control of the party upon whom
 17 the request is served . . .” Fed. R. Civ. P. 34(a). “Control is defined as the legal right to obtain documents
 18 on demand.” *United States v. International Union of Petroleum & Indus. Workers*, 870 F.2d 1450, 1452 (9th
 19 Cir. 1989). “A corporation must produce documents possessed by a subsidiary that the parent corporation
 20 owns or controls.” *Id.* “The party seeking production of the documents bears the burden of proving that the
 21 opposing party has such control.” *Id.*

22 ANALYSIS

23 In support of its burden to prove that Bean controls the documents in Bokalis’ possession, HHCG
 24 relies upon the testimony of Rinus Van de Ven to show the relationship between Bean and Bokalis. Motion
 25 to Compel, pp. 3-6; Bavand Decl., para. 3, Exh. B, Deposition of Rinus Van de Ven (“Van de Ven Depo.”).
 26 Bokalis is a worldwide dredging conglomerate with offices in Holland. Because Bokalis wanted to break into
 27 the U.S. dredging market, they formed Stuyvesant Dredging, Inc. Van de Ven Depo., pp. 11, 14-16. Mr. Van
 28 de Ven is the former President of Stuyvesant Dredging and Chief Operating Officer of Stuyvesant. Stuyvesant

1 Dredging, Inc. formed a joint venture with Bean and created Bean Stuyvesant LLC. Van de Ven Depo., pp.
2 73-76. Stuyvesant Dredging, Inc. and Bean each own 50% of Bean Stuyvesant LLC. Id.; Bavand Decl., para.
3 4, Exh. C (C.f. Bean LLC Organizational Chart). Relying on Van de Ven's testimony, HHCG further argues
4 that "[a]s Bean Stuyvesant LLC, both Bean and Stuyvesant/Bokalis formed various other Bean entities
5 (including Bean Environmental) . . . [t]herefore Bokalis/Stuyvesant is the United States based parent and an
6 affiliated company of Bean Environmental." Motion to Compel, p. 4. HHCG also argues that the relationship
7 between "Bean, Bokalis and Stuyvesant Dredging can be characterized as alter egos, joint ventures or sister
8 corporations" and "to treat them as unrelated entities would defy reality." Reply in Support of Motion to
9 Compel, p. 1, Dkt. #106. And, relying on cases from district courts in other circuits, HHCG argues that the
10 legal control test has been expanded to include third parties who are "closely related to the litigation." Id., p.
11 4.

12 Contrary to HHCG's argument that the legal control test has been "expanded," in the Ninth Circuit the
13 legal control test is the controlling standard. *In re Citric Acid Litigation*, 191 F.3d 1090, 1107 (9th Cir. 1999)
14 ("we conclude - - consistently with all of our sister circuits who have addressed the issue - - that the legal
15 control test is the proper standard under Rule 45"). The legal control test applies to requests for documents
16 under both Rule 45 and Rule 34. *See In re ATM Fee Antitrust Litigation*, 233 F.R.D. 542, 545 (N.D. Cal.
17 2005).

18 The corporate structure of Bean and Bokalis is such that neither Bean Environmental LLC nor Bean
19 Dredging LLC (the only two named defendants) exercise control over Bokalis. As the Bean organizational
20 chart demonstrates, Bean Dredging LLC is a wholly-owned subsidiary of C.F. Bean LLC. Craig Decl., para.
21 2, Exh. A. Bean Environmental LLC is controlled by Bean Meridian Holding, a holding company that is
22 controlled by Bean Dredging LLC. Id. Bean Dredging LLC owns 75% of Bean Meridian Holding which owns
23 75% of Bean Environmental LLC. Id. Stuyvesant Investments Inc., a U.S. subsidiary of Bokalis owns a 25%
24 interest in Bean Meridian Holding and Bean Environmental LLC. Id. And, the defendants (Bean
25 Environmental LLC and Bean Dredging LLC) have no officers or directors in common with Bokalis. Although
26 Mr. Van de Ven was an officer for Stuyvesant Dredging LLC (a wholly-owned U.S. subsidiary of Bokalis and
27 a 50% owner of Bean Stuyvesant LLC, Craig Decl., Exh. H), and Bean Stuyvesant LLC, these companies did
28 not have an ownership interest in either Bean Environmental LLC or Bean Dredging LLC. Craig Decl., Exh.

1 A.

2 HHCG has failed to carry its burden to show that Bean has legal control of Bokalis. Because HHCG
3 cannot show that either Bean Environmental LLC or Bean Dredging LLC are either subsidiaries or parents to
4 Bokalis and have the legal right to obtain Bokalis documents, HHCG cannot compel the production of Bokalis
5 documents through the named defendants, Bean Environmental LLC and Bean Dredging LLC. HHCG's
6 Motion to Compel Production of Documents [Dkt. #85] is **DENIED**.

7 **IT IS SO ORDERED.**

8 The Clerk shall send uncertified copies of this order to all counsel of record, and to any party appearing
9 pro se.

10 Dated this 11th day of October, 2006.

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13 RONALD B. LEIGHTON
14 UNITED STATES DISTRICT JUDGE
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